

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
corr.

SPECIAL CIVIL APPLICATION No 8840 of 1989

with

SPECIAL CIVIL APPLICATION Nos. 8913 of 1989
to 8919 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
No

MM ASHRAFI

Versus

OIL & NATURAL GAS COMMISSION

Appearance:

Special Civil Applications Nos.8840, 8913 to 8919
of 1989

Mr.N.R. Shahani, learned counsel for the petitioners.

Ms. V.P.Shah, learned senior counsel for the respondent Nos.1 and 2.

No one appears for the respondent Nos.3 to 5.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/04/96

16-4-96

17-4-96

COMMON JUDGMENT ;

1. This bunch of eight Special Civil Applications is based on identical facts and involve common questions of law and hence all these petitions are decided by this common judgment and order.

2. Initially Special Civil Application No.8840 of 1989 was filed jointly on behalf of 8 petitioners on 27-12-89. On that very day, when the matter came up before the Court, leave was granted to file separate petitions for petitioners Nos.2 to 8 and in terms of Court's order dated 27-12-89, 7 more petitions being Special Civil Applications Nos.8913 to 8919 of 1989 were filed.

3. On 12-10-90 Rule was issued in each of these petitions with the order that they will be heard with Special Civil Application No.3522 of 1989. On the question of interim relief, it was recorded with regard to the petitioners in Special Civil Applications Nos.8914 to 8916 of 1989 that they had already been terminated from the service with effect from 10-2-90 and with regard to the petitioner in Special Civil Application No.8919 of 1989 it was recorded that he had already left the service. For the remaining petitioners, status quo was directed to be continued till further orders and it was also recorded that the contract of Nayan Creative Marketing Consultants was to terminate by 31-12-90 and, therefore, the interim relief was ordered to enure till the time the contract of Nayan Creative Marketing Consultants was to be terminated and that in case the new contractor is engaged, the Commission shall introduce a term in the contract whereby the existing employees shall continue with them and this interim relief was to be available to these petitioners in the respective petitions i.e. Special Civil Application Nos.8840, 8913, 8917 and 8918 of 1989. It was also clarified in the order dated 12-10-90 that in case no new contractor is appointed vice contractor-respondent No.4 i.e. Nayan Creative Marketing Consultants, the question of continuing the interim relief thereafter would not survive. It has been given out by the parties that the contract continued upto 31-3-91 and, therefore, the petitioners in Special Civil Applications Nos.8840, 8913, 8917 and 8918 of 1989 continued till 31-3-91 on the strength of the interim order. It was then given out by

Mr. Shahani appearing for the petitioners that M.M. Ashrafi i.e. petitioner in Special Civil Application No.8840 of 1989, M.M. Shaikh- petitioner in Special Civil Application No.8913 of 1989 are out of employment since 31-3-91 as stated above, but Bariya Pratap Ranchhodbhai-petitioner in Special Civil Application No.8917 of 1989 and Mansuri Munaf Mohd. Kasam-petitioner in Special Civil Application No.8918 of 1989 are continued with the Contractor-Panache Associates, Vadodara even at present as they were later on recalled with different Contractors from time to time i.e. with Maruti Electrical, Ankleshwar in May, 1991, Ajay Electronics, Ahmedabad from April 1992 to February 1993, Shri Baba Electricals, Ahmedabad (also known as Dutt Intercom Sales & Services) from March 1993 to March 1995 and Panache Associates, Vadodara from 1-4-95 onwards. But this contract with Panache Associates, Vadodara is scheduled to come to an end on 30-4-96 and, therefore, these two petitioners i.e. Bariya Pratap Ranchhodbhai and Mansuri Munaf Mohd. Kasam are also facing prospects of being rendered unemployed from 30-4-96.

4. It appears from the submissions made in the main Special Civil Application No.8840 of 1989 that certain employees, other than these petitioners, who were engaged through labour contracts, had also filed Special Civil Applications Nos.6659 of 1987, 7767 of 1988 and 3522 of 1989 and in Special Civil Application No.7767 of 1988 an order was passed by the Division Bench on 30-11-88 that the contractor will not terminate the services of the petitioners unless his contract is terminated by the ONGC and in the event of termination of the contract by the ONGC and grant of a fresh contract to any other new contractor, the contract will include a term that the new contractor will employ the petitioners in that petition till further orders and further that this petition i.e. Special Civil Applicationno.7767 of 1988 was ordered to be heard with Special Civil Application No.6659 of 1987. Special Civil Applications Nos. 6659 of 1987 and 7767 of 1988 are still said to be pending while the Special Civil Application No.3522 of 1989 has already been decided and rejected. It appears that although in the order dated 12-10-90, to which reference has been made herein-above, it was categorically ordered that Rule in the present 8 Special Civil Applications shall be heard with Special Civil Application No.3522 of 1989,still these matters were not heard alongwith Special Civil Application No.3522 of 1989. Nevertheless the fact remains that the Special Civil Application No.3522 of 1989 was decided by the Division Bench of this Court on 24-2-93 whereby the petition was rejected and the rule was discharged. It

was pointed out by the learned senior counsel Ms. V.P.Shah appearing for respondent Nos.1 and 2 that one more identical Special Civil Application No.7965 of 1990 had also been rejected on 23-11-92 by the Division Bench and the notice was discharged with the observation that if the petitioners in that case approach the Regional Commissioner of Labour ((Central), Ahmedabad for redressal of their grievances, he will consider the grievances and try to redress the same as expeditiously as possible in accordance with law.

5. In the form of pleadings, I have before me (1) the Memo of the petition alongwith the documents including the amendment, which was allowed on 12-10-90, (2) affidavit-in-reply dated 7-2-90, (3) affidavit in rejoinder dated 27-7-90, (4) further affidavit dated 22-2-96 filed by petitioner M. M.Shaikh in Special Civil Application No.8913 of 1989, (5) further affidavit-in-reply dated 8-3-96 and (6) Rejoinder dated 27-3-96 to reply dated 8-3-96 filed by M.M.Mansuri, the petitioner in Special Civil Application No.8918 of 1989.

6. The matters were argued and heard at length and during the course of hearing on 2-4-96 it was submitted by Mr. Shahani, the learned counsel for the petitioners appearing in all these 8 matters, that in view of the subsequent developments which have taken place during the pendency of the petitions, he would press the claim only in respect of the petitioners, M.M.Shaikh, Bariya Pratap Ranchhodbhai and Mansuri Munaf Mohd. Kasam i.e. petitioners in Special Civil Applications Nos.8913, 8917 and 8918 of 1989 respectively. It was also submitted by Mr. Shahani that these three petitioners be continued in employment under the same arrangement which was operating at the time when the interim orders were passed on 12.10.90,till the dispute is decided by the Industrial Adjudicator on reference being made in case any dispute is raised by the petitioners in relation to the subject matter of these petitions. Ms. V.P.Shah appearing for the respondents Nos.1 and 2, therefore,sought time on 2-4-96 to consider the same and for making a definite proposal with regard to each of these three petitioners and the matter was posted to be further heard on 15-4-96 i.e. today. Ms. V.P. Shah appearing for the respondents Nos.1 and 2 today informed that it was not possible for the respondents either to continue the two petitioners, namely, Bariya Pratap Ranchhodbhai and Mansuri Munaf Mohd. Kasam or to keep the petitioner M.M. Shaikh in service now as was suggested by Mr. Shahani and, therefore, both the sides concluded their arguments today. Whereas out of these 8 petitions, only 3

petitions i.e. Special Civil Applications Nos.8913, 8917 and 8918 are being pressed and the rest of the petitions are not pressed by the learned counsel for the petitioners, I will be dealing with the cases of these three petitioners only as the rest of the 5 petitions are to be dismissed as not pressed.

7. The particulars regarding the petitioners have been set out in tabular form in Annexure 'A' at page 20 to 22 of the petition and in Annexure-I page 42 and 43 of the affidavit-in-reply dated 7-2-90. From these two charts it appears that the petitioner M.M. Shaikh and Bariya Pratap Ranchhodbhai were initially appointed with the ONGC on contract basis and petitioner Mansuri Munaf Mohd. Kasam was appointed with Ruhi Agency. M.M. Shaikh is a Graduate holding typing certificate and was appointed as a Telephone Operator and Bariya Pratap Ranchhodbhai is SSC and appointed as Helper/Messenger while Mansuri Munaf Mohd. Kasam is SSC and being a wireman was appointed as a Helper/Messenger. It has been stated in the petition that the petitioners were working in the office of Superintending Engineer (Electrical) of Technical Business Group under Acting General Manager (Co-ordination) and they were working with various labour contractors for quite some time. As per the pleadings contained in para 2, the petitioner M.M. Shaikh had been directly working for respondents Nos.1 and 2 and, thereafter, as a worker of different labour contractors and this petitioner-M.M. Shaikh was himself treated as a labour contractor for one year in the name of Ruhi Agency. It is submitted that such contracts were only paper arrangements and such labour contracts were in fact bogus and sham. In order to show that initially appointment was given by ONGC itself, reference has been made to documents Annexure B/1, Annexure B/2. Annexure B/3, Annexure C, Annexure D/1 and Annexure D/2 which have been issued under the signatures of Dy. S.E. (Elect.), ONGC, Ankleshwar/ Executive Engineer (Elect.), Ankleshwar Project of ONGC. All these documents have been issued between the dates 13-1-86 and 6-2-87. Besides these documents showing that initial appointments, as per these orders, were given by the ONGC itself, it has been alleged that the petitioner i.e. M.M.Shaikh was himself treated as a labour contractor, which was a paper arrangement because the supervision and control was directly done by the officers of respondents Nos.1 and 2 i.e. ONGC and Acting General Manager (Co-ordination). M.M.Shaikh was working as a Typist & Telephone Operator before being treated as an independent labour contractor for the period from 1-10-88 to 30-9-89 and while he himself was working as a Telephone Operator, he was only

required to distribute salary to other workmen in the name of Ruhi Agency, Ankleshwar as stated in para 9 of the petition. It has been further averred that these devices were absolutely transparent and otherwise the work was under direct control and supervision of the officers of the Commission and otherwise by very nature of work, it was obvious that the petitioners were working in the permanent activities and the situation with regard to the labour contracts was prepared only on the papers and these contracts were in contravention of S.10(2) of the Contract labour Act and the labour contracts, in which the petitioners were engaged, were absolutely illegal, null and void.

8. The petitioners came with the following grievances :

- "(i) that the Commission is adopting the device of labour contractor only with a view to deny legal rights of the petitioners and that this arrangement is absolutely bogus and respondent Nos.3 and 4 are only a paper-front;
- (ii) that all the future labour contractors are required to be directed to retain the present petitioners by incorporating such a condition in their contract of labour. This is without prejudice to the submission of the petitioners that their activities of Ofice Clerks, Telephone Operators, Attendant, Radio Operator etc., which is listed in Annexure 'A' cannot be given to a labour contractor at all.
- (iii) that the respondent Nos.1 and 2 are seeking to exploit the petitioners. The regular pay scale in the Commission for such posts is more than Rs.2000/- while petitioners are being paid meagre amount, which is less than half of the regular pay. The amount is detailed in Annexure 'A'. This inequality of pay is in contravention of Articles 14, 16 and 39(d), statutory condition of licence issued under Section 12 of the Contract labour (R & A) Act, 1970. Respondent No.5 is also under an obligation to take cognizance of this irregularity and it is under legal duty to ensure equality of pay."

9. In support of the petitioners claim for wages to be paid at par with regular employees performing duties as Telephone Operators and other Operators, with regard to the petitioners Bariya Pratap Ranchhodhbhai and Mansuri

Munaf Mohd. Kasam, clause No.(5) of the of the statutory conditions of licence to the following effect has been made the basis:

"(5) In cases where the workman employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment the wage rates, holidays, hours of work, and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same and similar kind of work provided that in the case of any disagreement with regard to the type of work of the same shall be decided by the Chief Labour Commissioner (Central), whose decision shall be final."

10. The prayers made in the petition are as under:

'(A) declaring that the petitioners are entitled to be treated as direct employees of the respondent-commission with effect from the dates mentioned in Annexure 'A', as their first date of entry in service and further directing the respondent-commission to pay all arrears of wages as payable to similarly placed regular employees within a fortnight period;

(B) directing respondent Nos.1 and 2 to treat the petitioners as direct employees and further declaring that the labour contract given to respondent Nos.3 and 4 is in contravention of Section 10(2) of Contract Labour (R&A) Act,1970;

(C) alternatively, directing the respondent Nos.1 and 2 to frame a scheme of absorbing the petitioners in their services and further directing them to absorb all the petitioners who have completed six months of service based on first date of entry mentioned in Annexure 'A' ;

(D) directing the respondents Nos.1 to 4 to afford full equality of pay and all service conditions compared to other similarly placed regular employees of the commission and further directing them to pay all arrears of wages on this basis with 12 per cent per annum, within fortnight;

(E) and/or directing the respondent no.5 to look into the compliance of statutory equality of pay and take further action in accordance of law within one month and also submit a report regarding this to this Hon'ble court;

(F) and/or directing the respondent Nos.1 and 2 to stipulate to their future contractors who may replace respondent Nos.3 and 4, that all the petitioners shall be required to be continued in service and further restraining them from altering the present status quo regarding service conditions of the petitioners to their disadvantage in any manner whatsoever;

(G) granting such other and further reliefs and passing such other and further orders as the circumstances of the case may require;

(H) awarding the costs of this petition.'

11. Respondents Nos.1 and 2 have sought to traverse the claims of the petitioners through the affidavit-in-reply dated 7-2-90 and the further affidavit-in-reply dated 8-3-96 as has already been referred to herein-above. While contesting the allegations made in the petitions, the affidavit-in-reply dated 7-2-90 filed by the ONGC, shows that the respondents have not disputed the genuineness of the documents Annexure B/1, B/2, B/3, C, D/1 and D/2 and all that it says is that these documents indicate that the petitioners were not appointed by the Commission on the regular basis, but they were entrusted the work under the contract as self employed contractors. It is the further case of the respondent-ONGC that the work was of temporary nature and the concerned petitioners had knowingly and voluntarily accepted to work as self employed contractors, petitioners, who had started working through the contractors, were now estopped from contending that they were the employees of the Commission, the Commission had not violated the provisions of any Act and that the petitioners could not be treated as workmen of the Commission, that after the expiry of their contract, the concerned persons had voluntarily joined their services with the concerned contractors and hence there was no question of treating them as direct employees of the Commission, that no sanctioned post in the Commission could be filled up without complying with the statutory procedures as laid

down by the Recruitment and Promotion Regulations and the petitioners knew very well that they were given the contract to work for a temporary period for which the Commission was not required to follow any procedure. In short, the case of the respondent-Commission is that the petitioners are not the employees of the Commission and they were engaged by the contractors and hence there is no question of treating them as direct employees of the Commission.

12. Besides this, it was submitted by the learned counsel appearing for the ONGC i.e. respondents Nos.1 and 2 that the identical petition being Special Civil Application No.3522 of 1989 has already been rejected. She has also submitted that the order dated 12-10-90 clearly shows that these petitions were to be heard with Special Civil Application No.3522 of 1989 and, therefore, all these petitions should also be rejected on the strength of the order passed in the Special Civil Application No.3522 of 1989. This batch of the petitions and the Special Civil Application No.3522 of 1989 being identical petitions, all these petitions should also meet the same fate as by Special Civil Application No.3522 of 1989 and the present petitioners should also be relegated to the remedy of raising an industrial dispute in accordance with the provisions of the Industrial Disputes Act and they should not be allowed to agitate their claims in the present petitions.

13. While Mr. Shahani has placed reliance on two unreported decisions rendered by the Division Bench of this Court in Special Civil Application no.1274 of 1990 decided on 30-7-90 and Special Civil Application No.1575 of 1988 decided on 30-3-89 and on AIR 1985 SC 670 (Workmen, Food Corporation of India v. M/s. Food Corporation of India), Ms. V.P. Shah appearing for the respondents Nos.1 and 2, besides the orders in the two unreported decisions dated 23-11-92 passed by the Division Bench in Special Civil Application No.7965 of 1990 and dated 24-2-93 passed in Special Civil Application No.3522 of 1989, has placed reliance on AIR 1992 SC 457 (Dena Nath v. National Fertilisers Ltd.), AIR 1992 SC 2130 (State of Haryana v. Piara Singh) and AIR 1995 SC 1893 (Gujarat Electricity Board, Ukai v. Hind Mazdoor Sabha)

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14. Before I proceed to deal with the submissions made on behalf of both the sides, I may first deal with the submissions made on behalf of the respondent Nos.1

and 2 by Ms. V.P. Shah that these petitions may be straightaway rejected on the basis of the unreported decisions in Special Civil Application No.3522 of 1989 decided on 24-2-93 and Special Civil Application No.7965 of 1990 decided on 23-11-92. May be that on 12-10-90 while issuing Rule, these petitions were ordered to be heard with Special Civil Application No.3522 of 1989, which was later on rejected, in view of the pleadings with regard to the petitioners in the present cases and the documents, which have been annexed with regard to the petitioners in the present set of petitions and the further details, which have come on record in the form of pleadings by way of further affidavits-in-reply and Rejoinders, instead of deciding these petitions so as to meet the same fate as Special Civil Applications Nos.3522 of 1989 and 7965 of 1990, I deem it appropriate to consider the submissions, which have been made at the Bar, in the light of the totality of the pleadings and documents, which have been made available on record of these petitions. Since it was stressed by the learned counsel for the respondents Nos.1 and 2 that the matters are exactly identical, I called for the records of the Special Civil Applications Nos.3522 of 1989 and 7965 of 1990 from the Registry, so as to examine as to whether these petitions are required to be dealt with separately. Having gone through the records of the Special Civil Applications Nos.3522 of 1989 and 7965 of 1990, on the basis of which these petitions are sought to be rejected by the learned counsel for the respondents Nos.1 and 2, I find that the prayers made in these petitions are substantially common, but the case of the three petitioners, which is being pressed by the learned counsel for the petitioners, stands on a little different footing. The factual foundation and the further facts, which have come on record by way of pleadings through additional affidavit-in-replies and Rejoinders etc. require a separate consideration, more particularly because the nature of the documents, which have been annexed as Annexures B/1, B/2,B/3, C, D/1 and D/2, were not there and in the affidavit-in-reply the respondents Nos.1 and 2 have admitted these documents and the arguments, which have been raised by the petitioners on the basis of these documents, as also facts, which have been revealed with regard to the engagement of the employes themselves as the contractors etc. do require a separate consideration and in case such submissions, which have been made on the premise of the averments and documents referred to hereinabove, are not dealt with, it will amount to denying a right to seek adjudication of all the grievances. For the reasons, as aforesaid, I do not consider it appropriate to reject these petitions on

the basis of the two unreported decisions in Special Civil Applications Nos.3522 of 1989 and 7965 of 1990, on which reliance has been placed by the learned counsel for the respondents Nos.1 and 2.

15. Petitioner - M.M. Shaikh, according to the respondents themselves, being a Graduate with Typing Certificate, was appointed as a Telephone Operator by the ONGC initially on 1-6-86 as per the details given in Annexure 'A' at page 20 in the petition. But in the statement Annexure "I" filed alongwith the affidavit-in-reply, he has been shown to have entered the service on 1-7-88 with ONGC on contract basis. However, the document annexure 'C' at page 26 is a Certificate issued by the Executive Engineer (Elect.) of the Ankleshwar Project of ONGC, which shows that he had been engaged as a Typist on contract basis for the period from 1-6-86 to 31-8-86 and the genuineness of this document Annexure 'C' hasn't been disputed in the affidavit-in-reply. It is ofcourse a different matter that subsequent to the period of contractual employment with ONGC he has worked with the labour contractors of ONGC in different phases of time and has continued as such upto 31-3-91.

16. Petitioner Briya Pratap Ranchhodhbhai, the holder of the qualification of SSC, was appointed as a Helper/Messenger by ONGC itself on contract basis initially on 1-10-88 and later on i.e. on expiry of this contractual employment, he has worked with other contractors of ONGC for different periods and it is the categorical case of this petitioner that he is still continuing in the services of the contractor of ONGC as he had been recalled subsequently even after 31-3-91. With regard to this petitioner, it has been stated in the further affidavit dated 22-2-96 filed by M.M. Shaikh that he is also performing the duties of Technician and at present also he is working with Panache Associates, Vadodara. These averments made in para 3 and 4 of the further affidavit dated 22-2-96 filed by M. M. Shaikh have been replied in para 6 and 7 of the further affidavit-in-reply dated 8-3-96 filed by the respondents and with regard to Bariya it has been stated therein that he was engaged by the contracting Agencies, but this fact alone do not give him any right of being absorbed in the employment of the ONGC. Thus the continuance of Bariya with the contracting Agencies of ONGC has not been disputed, although the learned senior counsel for the respondent Nos. 1 and 2 Ms. V.P.Shah orally submitted that this petitioner Bariya was seen driving a vehicle of

his brother-in-law, who has got a taxi and this oral submission made by Ms. V.P.Shah has been denied orally by Mr. Shahani by saying that Bairya is on leave for a period of 8 to 10 days at present and this has nothing to do with the case of Bariya that he is continuing with the contracting Agencies of the ONGC and this factual position has not been disputed by the respondents Nos.1 and 2.

17. Mansuri Munaf Mohd. Kasam is shown to have joined the contracting Agency of ONGC as Helper/Messenger initially on 11-1-89 and, thereafter, he had worked with other contracting Agencies of ONGC and after 31-3-91 his services were recalled by Maruti Electricals in May 1991 and, thereafter, he has worked with different contracting Agencies of ONGC and at present also he is working with Panache Associates, Vadodara since 1-4-95, which is a contracting Agency of ONGC. The factual position with regard to the continuance of this petitioner has also not been disputed by the respondents Nos.1 and 2 in their further affidavit-in-reply and thus he also continues in the service with a contracting Agency of the ONGC.

18. Apart from the factual position with regard to these three petitioners, as aforesaid, it will be noticed that the respondents have themselves produced a Notification dated 8-9-94 whereby the Central Government in exercise of the powers conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970, after consultation with the Central Advisory Contract Labour Board, prohibited the employment of contract labour in various works, specified in the Schedule in the establishments of the ONGC in the country and this Schedule includes Telephone Operators, Attendants/Helpers/Peons, Typists, Clerks, Radio Operators, Drivers etc. and the respondents have also stated at page 66 of the further affidavit-in-reply dated 8-3-96 that the petitioners had worked as Telephone Operators or Telex Operators, M/s. Ajay Electronics was awarded the contract on comprehensive basis for one year from 1-3-92 to 28-2-93 for the repair and maintenance of the ONGC Internal Telephone Circuits consisting of 300 subscribers at ONGC office complex for providing the services as well as the materials and spare parts. It has been further stated that, thereafter, the contract on the comprehensive basis for the repair and maintenance of the said Circuit was entrusted to Intercom Sales & Services for the period from 1.3.93 to 28.2.94 and the said contract had been extended from time to time. It is also stated that Shri Baba Electrical, Ahmedabad was

awarded the comprehensive contract for the repair and maintenance of the ONGC's Internal Telephone Circuits consisting of about 300 subscribers at ONGC Colony, Ankaleshwar for the period from 1.3.93 to 28.2.94 and the said contract was extended from 1.3.94 to 28.2.95. It is then stated that fresh contract on comprehensive basis was awarded for the period from 1-3-95 to 28-2-96 and so far as M/s. Panache Associates, Vadodara is concerned, it has been stated that the contract was awarded to it on comprehensive basis for the annual maintenance of the accessories for the communication equipment for the period from 1-5-95 to 30-4-96. The copies of these comprehensive contracts have also been annexed.

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19. The learned counsel for the respondents Nos.1 and 2 has submitted on the basis of the Supreme Court decision in State of Haryana v. Piara Singh (Supra) that the regularisation of services can not be directed. Unless and until the concerned petitioners are treated to be the employes of ONGC, there is no question of direction for regularisation of their services in the ONGC. It has to be agreed on all hands that the decision as to whether the petitioners can be treated as the employees of the ONGC or not must precede any direction for regularisation and, therefore, question for giving a direction for regularisation of the petitioners in the services of ONGC simply does not arise unless it is adjudicated as to whether they should be treated as the employees of ONGC or not. However, the observations made in para 10 of the aforesaid decision may be quoted as under:

"The main concern of the court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment

is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above."

20. On the question as to whether the petitioners can be treated to be the employees of ONGC or not, the learned counsel for the petitioner has placed reliance on AIR 1985 SC 670 and has submitted that in view of the law laid down in this decision of the Supreme Court, the present petitioners should be directed to be treated as the employees of ONGC. In Workmen, Food Corporation of India v. M/s Food Corporation of India's case (Supra) the Supreme Court noticed that different methods were adopted by the Food Corporation of India at different places for employing labour for handling foodgrains. Initially a contractor was engaged by the Corporation for handling storage and transit of foodgrains at one Depot and subsequently, by negotiations and settlements, the contract system was abolished and the workmen were directly paid the wages, presumably at piece rate for the service rendered by them and further attempt was made to bring about a basic change in the system by reinducting the intermediary contractor. This attempt to change the status of the workmen from being workmen of the Corporation to becoming the labour employed by the contractor was resisted by Food Corporation of India Workers' Union and it led to negotiations between the Corporation and the Union resulting in a settlement. Examining the questions raised before the Supreme Court on the aforesaid factual premises, the Court held as under:

(1) Abolition of the contract system and the introduction of direct payment system brought about a basic qualitative change in the relationship between the Corporation and the workmen and on the appearance of the intermediary contractor, a direct relationship of master and servant came into existence between the Corporation and the workmen.

(2) That any termination of service contrary to the provisions of the Standing Orders and the provisions of the Industrial Disputes Act would be void and, therefore, the workmen working under an employer were told that they had ceased to be the workmen of that employer, and had become workmen of another employer, namely, the

contractor in that case, in legal parlance such an act of the first employer constituted discharge, termination of service or retrenchment by whatsoever name called and a fresh employment by another employer, namely, the contractor. If the termination of services by the first employer were contrary to the well established legal position, the effect of the employment by the second employer was wholly irrelevant. The action of introducing so as to displace the contract of service between the Corporation and the workmen would be illegal, invalid and ab initio void. Once such workmen became the workmen of the Corporation it was not open to the Corporation to induct a contractor and treat its workmen as workmen of the contractor.

- (3) After introducing the direct payment system agreed to between the parties, if the Corporation of the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change.

Para 3 of the aforesaid judgment in Food Corporation of India's case shows that an industrial dispute had been raised by the Union and the same was referred by Central Government to the Central Industrial Tribunal under S.10 of the Industrial Disputes Act for adjudication of the question as to whether the discontinuance of employment of 464 workers of their Siliguri Depot with effect from 21-7-75 by the management of Food Corporation of India is lawful and justified? If not, to what relief are the workers entitled. So far as the present matters are concerned, the petitions have been straightaway filed before this Court under Article 226 of the Constitution of India and, therefore, Food Corporation of India's case may not be of any help to the petitioners so far as these proceedings under Article 226 of the Constitution of India are concerned.

21. Learned counsel for the respondents Nos.1 and 2 has also placed heavy reliance on the law laid down by the Supreme Court in the decision reported in AIR 1992 SC 457 (Supra) wherein the Supreme Court has held that non compliance with the provisions of the registration of the license by the employer may result into the exposure of the employer for prosecution, but the contract labour employed does not become direct employees of the principal employer. The Supreme Court has firmly expressed that in proceedings under Article 226, merely

because the contractor or the employer had violated any provision of the Act or the rules, the court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. Keeping in view the law laid down as above by the Supreme Court, I do not find that the petitioners have any locus for the purpose of being treated as the employees of ONGC in these proceedings under Article 226 of the Constitution of India in contradistinction to the proceedings in the adjudication of an industrial dispute in case of reference. Since in these proceedings under Article 226, the directions can not be given to treat them as the employees of ONGC, the question of giving any direction for their regularisation as employees of the ONGC simply does not arise. But that is not the end of the matter. The question still remains as to whether in the facts and circumstances of this case, when two out of the three employees, namely, M.M. Shaikh and Bariya Pratap Ranchhodhbhai were initially appointed by the ONGC and two out of the three petitioners, namely, Bariya Pratap Ranchhodhbhai and Mansuri Munaf Mohd., Kasam are continuing in service as on today, in view of the facts stated in the earlier part of the judgment, in case they are relegated to seek their remedy under the Industrial Law by way of raising industrial dispute, some arrangement has to be made for them till the matters are adjudicated in the remedy, which they may seek under the Industrial Law. It has already been stated in the earlier part of this order that M.M. Shaikh had been initially appointed in the year 1986. He is Graduate with Typing Certificate and he has continued initially with the ONGC and subsequently with the contracting Agencies of the ONGC till 31-3-91, Bariya Pratap Ranchhodhbhai had also been initially appointed by ONGC since 1988 and has subsequently continued and is continuing with the contracting Agencies of the ONGC and Mansuri Munaf Mohd. Kasam has been continuing with the contracting Agencies of the ONGC since 1989 and they have been discharging the duties of arduous nature, as has been narrated in para 4 of the affidavit dated 27-3-96 filed in rejoinder to the reply dated 8-3-96 by M.M. Mansuri- would it be just and equitable to render them jobless at this stage and not to make any arrangement till they are directed to seek the remedy under the Industrial Law when the matters have remained pending in this court since 1989 up till now? It is a case in which it has become very clear from the pleadings of both the sides that the ONGC has switched on to the labour contract from time to time. Whatever may be the phraseology of the term used in the contract, whether they call it a contract with regard to the repairs, maintenance or the contract for job etc. the

fact remains that the contract labour system has been made use of by the ONGC for a long period. The allegations that the labour contracts are absolutely sham and bogus and in certain cases, the employee himself has been made the labour contractor and was to disburse the amount after receiving the same from ONGC have also been revealed and the facts, which have been narrated in the earlier part of the order, clearly show that even after the issue of the Notification dated 8-9-94, by which the employment of contract labour in various works, as per the Schedule, was prohibited by the Government of India in the establishments of ONGC, in the establishments of ONGC, the labour contracts have been given and such labour contracts given upto 30-4-96 have been referred and dealt with in para 18 of the judgment hereinabove. In such like situation, when the ONGC, which is a an agency and instrumentality of the State, itself has given contract in violation of the statutory Notifications issued by the Central Government and the averments, which have been made by the petitioners, which are blended with the contemporaneous documents, which have been admitted by the respondents Nos.1 and 2 in their pleadings to be genuine documents, it cannot be said that the petitioners should be thrown absolutely high and dry at this stage only to face and suffer the trauma of litigation in future under the Industrial Law while remaining out of employment. In any case, when new problems arise, such new problems call for new alternatives and, therefore, matters have to be considered with a labour oriented approach and it is a dismal fact that such a suggestion, which was made to the ONGC on 2-4-96, did not find favour with the functionaries of the ONGC and the learned counsel for the respondents Nos.1 and 2 was bemoaned to say before this Court on 15-4-96, when the matter came back, that such a proposal was not acceptable to the functionaries of the ONGC and in support of this stand, which was taken, the help was sought to be taken on the basis of the statutory Notification dated 8-9-94, which had already been flouted by the ONGC in the name of giving contract upto the period of 30-4-96 and such contracts were given after the date of this Notification i.e. 8-9-94. The learned counsel for the respondents Nos.1 and 2 unsuccessfully attempted to wriggle out of this position by saying that these contracts were on comprehensive basis and even to the Panache Associates, Vadodara, the contract was awarded on comprehensive basis for the annual maintenance of the accessories for the communication equipments and like explanations have been given for other contracts. Whether it is a contract for annual maintenance of the accessories for the communication equipments, it was for a period subsequent

to 8-9-94 and it cannot be said that such contract do not involve the works, which have been prohibited in the Schedule of the Notification dated 8-9-94 itself.

22. The learned counsel for the respondents Nos.1 and 2 faced with this situation, referred to AIR 1995 SC 1893 i.e. Gujarat Electricity Board, Ukai v. Hind Mazdoor Sabha (Supra) and submitted that it is only for the appropriate Government to abolish the labour contract and no Court or Industrial Court can abolish the contract labour and whether the labour contract is sham or genuine is a question which can be decided only by the Industrial Court. In Gujarat Electricity Board's decision, out of the four questions, which were considered, the question formed at item No.(d) under para 6 was as under:

"(d) In case the contract labour system is abolished, what is the status of the erstwhile workmen of the contractors?"

In para 11 of the Judgment, it has been held that if there is no genuine contract and the so called contract was sham or a camouflage to hide the reality, the said provisions are inapplicable. When, in such circumstances, the concerned workmen raise an industrial dispute for relief that they should be deemed to be the employees of the principal employer, the Court or the industrial adjudicator will have jurisdiction to entertain the dispute and grant the necessary relief.

It has been observed in para 14 that it is no doubt true that neither S.10 of the Act nor any other provision thereof provides for determination of the status of the workmen of the erstwhile contractor once the appropriate Government abolishes the contract labour. In fact, on the abolition of the contract, the workmen are in a worse condition since they can neither be employed by the contractor nor is there any obligation cast on the principal employer to engage them in his establishment. The Supreme Court has noted a vital lacuna in the Act. Although the Act has been placed on the statute book with all benevolent intentions, and elaborate provisions are made to prevent the abuse of the contract labour system as is evident from the Statement of Objects and Reasons and the provisions of the Act referred in detail, the legislature has not provided any relief for the concerned workmen after the contract is abolished.

Regarding the status of the erstwhile workmen of

the contractor, once the contract labour system is abolished and an industrial dispute is raised, the status of the workmen will be as determined by the industrial adjudicator. If the contract labour system is abolished while the industrial adjudication is pending or is kept pending on the concerned dispute, the adjudicator can give direction in that behalf in the pending dispute. However, if no industrial dispute is pending for determination of the issue, nothing prevents an industrial dispute being raised for that purpose.

23. When it was argued that it was a case in which the matter should have been taken under the Industrial Law, Mr. Shahani has submitted that there was only a handful of employes in the contract labour having no Union of their own and the Unions of the regular employees may not espouse the cause of such employees in the contract labour and, therefore, they could not raise the dispute. This question has also been dealt with by the Supreme Court in para 16 of the Judgment and it has been observed that if the contract is not genuine, the workmen of the contractor themselves can raise such dispute, since in raising such dispute the workmen concerned would be proceeding on the basis that they are in fact the workmen of the principal employer and not of the contractor. According to the Supreme Court, the dispute would squarely fall within the definition of industrial dispute under S.2(k) of the Act being a dispute between the employer and the employees and in that case the dispute would not be for abolition of the contract labour, but for securing the appropriate service conditions from the principal employer on the footing that the workmen concerned were always the employees of the principal employer and they were denied their dues. In such a dispute, the workmen are required to establish that the so called labour contract was sham and was only a camouflage to deny them their legitimate dues. The Supreme Court has concluded itself categorically, as found in para 18 (iv), by holding in no uncertain terms that even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms. Thus, I have no hesitation in holding that there is no bar under the law for the present petitioners to raise an industrial dispute with regard to their absorption in the ONGC or to be treated as the employees of ONGC. Rather in view of the law laid down by the Supreme Court in the Gujarat Electricity Board's case (Supra) it is

permissible for them to raise such an industrial dispute.

24. In the peculiar facts and circumstances of this case, when two of the employees, as stated above, are still continuing, may be with the contracting Agency of the ONGC, and the third employee, namely M.M. Shaikh, who had ceased to be in employment from 31-3-91, had been appointed initially by the ONGC, while the prayer with regard to their claim for being treated as the employees of ONGC is not entertained in these writ petitions, it is held that it will be open for them to raise an industrial dispute in this regard, if they so choose in accordance with law. It is directed that the two petitioners, namely, Bariya Pratap Ranchhodhai and Mansuri Munaf Mohd. Kasam will be continued in the service as they have been continuing so far and their status shall be maintained till the dispute is adjudicated by the industrial adjudicator under the provisions of the Industrial Disputes Act and the petitioner M.M. Shaikh, who is also unemployed since 31-3-91, shall also be taken in employment with any of the contracting Agencies by the ONGC and shall be continued as such till the dispute, which may be raised by the petitioners, is adjudicated by the industrial adjudicator. All the above three petitioners shall be continued in service against the suitable post according to their qualifications while maintaining parity of wages with reference to the wages for the identical posts subject to their facing the regular recruitment, if any, in accordance with the Rules. If at all the petitioners choose to raise any industrial dispute, they would approach the concerned Conciliation Officer within a period of two months from the date they are able to obtain the certified copy of this judgment and order. Whereas the ONGC is an agency and instrumentality of the State, it is expected to act like a virtuous litigant and adhere to the wholesome and benevolent provisions of the Industrial Disputes Act and as has been observed by the Supreme Court, it is also expected to act as a Model employer. In view of the prayers made by the petitioners in the petitions with regard to the framing of a Scheme for the absorption of these petitioners, I also deem it proper to direct the ONGC to frame a Scheme for absorption of the employees, who have worked for a considerable long period, as a part of the contract labour system. It is expected that these directions, hopefully addressed to a responsive body like ONGC, would receive the due attention to be carried out within a reasonable time so as to disnecessitate even the raising of any industrial dispute by the petitioners, in case the ONGC itself comes out with a Scheme for their absorption even now in the changed context and in view of

the subsequent developments, which have taken place during the pendency of these proceedings with regard to the employment of the petitioners and also the statutory Notification which had been issued by the Government on 8-9-94.

25. Thus, Special Civil Applications Nos. 8913, 8917 and 8918 of 1989 are partly allowed with directions as above and the Rule is made absolute accordingly with no order as to costs.

The rest of the five Special Civil Applications i.e. Special Civil Applications Nos. 8840, 8914, 8915, 8916 and 8919 of 1989 are hereby dismissed as not pressed and Rule is also discharged in all these five petitions. Interim relief, if any, in any of these five petitions shall automatically come to an end. No order as to costs.